

Introduced by Senator Wyland

February 20, 2014

An act to amend Section 368 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1233, as amended, Wyland. Theft: elder and dependent adults.

Existing law makes it a crime, punishable either as a misdemeanor or a felony, *for a caretaker of an elder or dependent adult, or for a person who is not a caretaker who knows or reasonably should know that the victim is an elder or dependent adult*, to violate any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft when ~~the victim is an elder or dependent adult~~ and the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950. If punished as a misdemeanor, existing law authorizes imprisonment or a fine not to exceed \$2,500, or both the fine and imprisonment. If punished as a felony, existing law authorizes imprisonment or a fine not to exceed \$10,000, or both the fine and imprisonment.

This bill would make the maximum amount of the fine for this crime \$25,000, if punished as a misdemeanor, and ~~\$100,000~~, \$250,000, if punished as a felony.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 368 of the Penal Code is amended to read:

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) A person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits an elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of an elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars (\$6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

(2) If, in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If, in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) A person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm

1 or death, willfully causes or permits any elder or dependent adult
2 to suffer, or inflicts thereon unjustifiable physical pain or mental
3 suffering, or having the care or custody of an elder or dependent
4 adult, willfully causes or permits the person or health of the elder
5 or dependent adult to be injured or willfully causes or permits the
6 elder or dependent adult to be placed in a situation in which his or
7 her person or health may be endangered, is guilty of a
8 misdemeanor. A second or subsequent violation of this subdivision
9 is punishable by a fine not to exceed two thousand dollars (\$2,000),
10 or by imprisonment in a county jail not to exceed one year, or by
11 both that fine and imprisonment.

12 (d) A person who is not a caretaker who violates any provision
13 of law proscribing theft, embezzlement, forgery, or fraud, or who
14 violates Section 530.5 proscribing identity theft, with respect to
15 the property or personal identifying information of an elder or a
16 dependent adult, and who knows or reasonably should know that
17 the victim is an elder or a dependent adult, is punishable as follows:

18 (1) By a fine not exceeding twenty-five thousand dollars
19 (\$25,000), or by imprisonment in a county jail not exceeding one
20 year, or by both that fine and imprisonment, or by a fine not
21 exceeding ~~one hundred thousand dollars (\$100,000)~~, *two hundred*
22 *fifty thousand dollars (\$250,000)*, or by imprisonment pursuant to
23 subdivision (h) of Section 1170 for two, three, or four years, or by
24 both that fine and imprisonment, when the moneys, labor, goods,
25 services, or real or personal property taken or obtained is of a value
26 exceeding nine hundred fifty dollars (\$950).

27 (2) By a fine not exceeding one thousand dollars (\$1,000), by
28 imprisonment in a county jail not exceeding one year, or by both
29 that fine and imprisonment, when the moneys, labor, goods,
30 services, or real or personal property taken or obtained is of a value
31 not exceeding nine hundred fifty dollars (\$950).

32 (e) A caretaker of an elder or a dependent adult who violates
33 any provision of law proscribing theft, embezzlement, forgery, or
34 fraud, or who violates Section 530.5 proscribing identity theft,
35 with respect to the property or personal identifying information of
36 that elder or dependent adult, is punishable as follows:

37 (1) By a fine not exceeding twenty-five thousand dollars
38 (\$25,000), or by imprisonment in a county jail not exceeding one
39 year, or by both that fine and imprisonment, or by a fine not
40 exceeding ~~one hundred thousand dollars (\$100,000)~~, *two hundred*

1 *fifty thousand dollars (\$250,000)*, or by imprisonment pursuant to
2 subdivision (h) of Section 1170 for two, three, or four years, or by
3 both that fine and imprisonment, when the moneys, labor, goods,
4 services, or real or personal property taken or obtained is of a value
5 exceeding nine hundred fifty dollars (\$950).

6 (2) By a fine not exceeding one thousand dollars (\$1,000), by
7 imprisonment in a county jail not exceeding one year, or by both
8 that fine and imprisonment, when the moneys, labor, goods,
9 services, or real or personal property taken or obtained is of a value
10 not exceeding nine hundred fifty dollars (\$950).

11 (f) A person who commits the false imprisonment of an elder
12 or a dependent adult by the use of violence, menace, fraud, or
13 deceit is punishable by imprisonment pursuant to subdivision (h)
14 of Section 1170 for two, three, or four years.

15 (g) As used in this section, “elder” means a person who is 65
16 years of age or older.

17 (h) As used in this section, “dependent adult” means a person
18 who is between 18 and 64 years of age, inclusive, who has physical
19 or mental limitations that restrict his or her ability to carry out
20 normal activities or to protect his or her rights, including, but not
21 limited to, persons who have physical or developmental disabilities
22 or whose physical or mental abilities have diminished because of
23 age. “Dependent adult” includes a person between 18 and 64 years
24 of age, inclusive, who is admitted as an inpatient to a 24-hour
25 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of
26 the Health and Safety Code.

27 (i) As used in this section, “caretaker” means a person who has
28 the care, custody, or control of, or who stands in a position of trust
29 with, an elder or a dependent adult.

30 (j) Nothing in this section shall preclude prosecution under both
31 this section and Section 187 or 12022.7 or any other law. However,
32 a person shall not receive an additional term of imprisonment under
33 both paragraphs (2) and (3) of subdivision (b) for a single offense,
34 nor shall a person receive an additional term of imprisonment
35 under both Section 12022.7 and paragraph (2) or (3) of subdivision
36 (b) for a single offense.

37 (k) In any case in which a person is convicted of violating these
38 provisions, the court may require him or her to receive appropriate
39 counseling as a condition of probation. A defendant ordered to be
40 placed in a counseling program shall be responsible for paying the

1 expense of his or her participation in the counseling program as
2 determined by the court. The court shall take into consideration
3 the ability of the defendant to pay, and no defendant shall be denied
4 probation because of his or her inability to pay.

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